

Federal, State and Local Governments Newsletter

Volume 1

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CONTENTS

- 2 — Independent Contractor or Employee?
- 3 — Who is an Employee?
- 5 — Not Sure Whether Someone is Your Employee?
- 7 — Form 1099-MISC: Reporting Payments to Independent Contractors
- 9 — Revised 2002 1098-T, Tuition Payments Statement
- 10 — Federal, State and Local Government Contacts
- 12 — Tax Exempt Bonds

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FEDERAL

STATE

LOCAL

ONE STOP SHOPPING

FSLG
HAS
TWO NATIONAL
PROGRAMS
TO ADDRESS
EMPLOYEE AND
INDEPENDENT
CONTRACTOR
ISSUES.

FEDERAL, STATE AND LOCAL GOVERNMENTS CUSTOMER ASSISTANCE

Call toll-free for general information and
account assistance:
Customer Account Services
(877) 829-5500

Access the Web site of Federal, State
and Local Governments
www.irs.gov/govts

For a written response, send
correspondence to:
Internal Revenue Service
Federal, State and Local Governments
T:GE:FSL
Attn: Jan Schlegel, Operations Manager
1111 Constitution Avenue NW
Washington, DC 20224

INDEPENDENT CONTRACTOR OR EMPLOYEE?

BY ALLEN JONES, FSLG DIRECTOR

With increasing government budget deficits and outsourcing of non-core operations, when do you know whether you can either re-hire your employees or hire outside contractors to keep up with your responsibilities and be in compliance with employment tax laws? This is an issue that all levels of government are struggling with. FSLG has two national programs to address employee and independent contractor issues, the Wage Reporting Compliance Program and the Information Return Reporting Compliance Program.

The Wage Reporting Compliance Program consists of delivery of educational information as well as enforcement through audits. To deliver the educational information, we participate in conferences and seminars as well as assisting you in resolving individual reporting or payment problems you may have. This program specifically addresses the worker classification issue by providing you information to help you make critical decisions for your agency or department. If you are uncertain of the relationship with your contractors, we can assist you in determining the status of the relationship.

On the other hand, if you merely want to ensure that you are properly reporting and filing payments to independent contractors, the Information Return Reporting Compliance Program is for you. It is also a comprehensive program that includes both education and enforcement components to increase voluntary compliance. If you have outside contractors providing services to your agency or department, we can provide you the necessary information to ensure that your reporting requirements are met.

We help make it easier for you to understand and comply with our very complex tax laws. Please contact your local FSLG office or visit our web site at www.irs.gov/govts.

WHO IS AN EMPLOYEE?

BY STEWART ROULEAU, FSLG PROGRAM MANAGER

Whether workers who provide services for government entities are employees or independent contractors is a question of great importance for the workers and those who pay them. Generally, when workers are employees, the government entity that employs them must withhold and pay Federal income tax, social security and Medicare taxes. They may also be liable for withholding and paying state income and unemployment taxes. For workers who are independent contractors, the governmental entity has information-reporting responsibilities, but does not have to withhold and pay employment taxes. These workers are generally responsible for reporting and paying income and self-employment tax themselves.

Common-Law Standard

Under Federal law, workers are covered by a common-law standard that determines whether they are employees. Under this standard, if the paying entity has the right to control both the means and the results of the work, these workers are employees for Federal tax purposes. A large body of case law has refined this standard over the years.

Whether there is sufficient control to meet this standard depends on all the facts and circumstances. These facts fall into three main categories:

Behavioral Control – Facts indicated by questions such as:

- Does the payer provide training or instructions?
- Does the worker carry government identification?
- Does the worker receive an evaluation of performance?

Financial Control – Facts indicated by questions such as:

- Does the worker have a financial investment in the operation?
- Does the worker offer services to the general public?
- Does the worker have unreimbursed expenses?

Relationship of the Parties – Facts indicated by questions such as:

- Can the worker be terminated or quit at any time?
- Does the worker receive benefits?
- Are the services performed a key aspect of the regular business activity?

No fact by itself is decisive, and all facts must be considered in making a determination. For a more detailed discussion of the common law tests, see IRS Publications 15-A, Employer's Supplemental Tax Guide, and Publication 963, Federal-State Reference Guide.

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Employment Status of Government Workers

Section 218 Agreements

Workers who are covered by a Section 218 Agreement between the State Social Security Administrator and the Social Security Administration are by definition employees. They are subject to all employment taxes and cannot be independent contractors.

Appointed or Elected Public Officials

A public official has authority to exercise the power of the government and does so as an agent and employee of the government. The Regulations provide that certain appointed and elected officials are public officials, including a governor, a mayor, a county commissioner, a judge, a sheriff, a county or city attorney, a marshal, a sheriff, a constable, or a registrar of deeds. In general, elected officials, are employees. Appointed officials may be employees or contractors, depending on the level of independence provided for the position. In these cases, their work is not directly controlled by other officials or a governing body and they are generally compensated based on output of work. Examples may include hearing officers and property tax assessors.

The courts have generally established that officers with responsibility for enforcing laws directly represent government authority and are therefore employees of those governments.

In cases where it is questionable whether a public worker is an employee, state statutes may be helpful. While they cannot supersede the standards established by Federal law, these statutes frequently specify the duties and degree of control in public positions. Generally, the duties and reporting responsibilities are specified, and this is usually sufficient to indicate that the worker is an employee.

Fee-Based Public Officials

An exception to the rule concerning public officials is provided for fee-based officials, who may not be employees if they receive substantially all of their income from fees paid to them directly by the public. These fees are considered self-employment income rather than wages and are subject to self-employment tax.

Misclassification of workers can have costly consequences for government entities. If you have questions, please contact your FSLG Specialist.

NOT SURE WHETHER SOMEONE IS YOUR EMPLOYEE? SUBMIT FORM SS-8 FOR IRS HELP

BY HANS VENABLE, FSLG PROGRAM ANALYST

Any payer, including a government entity, and any worker can submit a completed Form SS-8, *Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, to request a determination from the IRS of a worker's status (employee or independent contractor) for purposes of Federal employment taxes and income tax withholding.

Form SS-8 asks questions about the work relationship between the firm and the worker. These questions relate to the common-law standards. There is no single decisive fact when it comes to the common-law standards. Each of the various elements of control must be carefully evaluated and weighed against the others in order to determine whether an individual is an employee or an independent contractor.

Because there are usually two (or more) parties who could be affected by a determination of worker status, the IRS attempts to get information from all parties involved by sending those parties blank Forms SS-8 for completion. The Forms SS-8 are then assigned to a specialist, located at one of two SS-8 Processing Centers, who will review the facts, apply the law, and render a decision. The IRS will generally issue a formal determination to the firm (any entity for which a worker provides services) or payer (if that is a different entity), and will send a copy to the worker.

The processing of a Form SS-8 may take as long as 120 days. This includes 30 to 45 days for all parties to submit a completed Form SS-8, up to 30 days for the case to be assigned to a specialist, 30 to 45 days for the specialist to review the case, clarify questions, secure additional information from each party if necessary, and issue the determination letter.

Gail Lontine, SS-8 Coordinator at the SS-8 Processing Center located in Newport, Vermont, says that although the form is long (3 pages and over 50 questions), it is important to answer each question with as much detail as possible. She says organizations and workers typically limit their responses to the amount of space that is provided on the form, which is generally not enough information to make the determination. She advises that providing additional specific information is helpful and will speed the processing.

COMMENTS OR SUGGESTIONS?

We welcome
your comments
and
your suggestions
for information
you would like
to see in this newsletter.

Please
contact us
through our website at
www.irs.gov/govts.

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Gail adds that some of her cases require extensive interaction with the involved parties to investigate the issues and reconcile differences between the differing views of the work relationship.

Gail says that government entities should be sure to provide the following when completing the Form SS-8:

- Copies of any written contracts and agreements about the job/position.
- Copies of statutes if the job/position in question was created by statute.
- Specific information about how the worker obtained the job; i.e., submitted an application, submitted a bid, assigned by an employment agency, appointed to the position, elected to the position, etc.
- Specific information about any company owned by the individual, which provides similar services to the general public.

In addition, she says that the organization needs to be sure to provide a good mailing address and a telephone number of an authorized government official so that issues can be clarified over the telephone.

If you are uncertain of the character of your relationship with your contractors or you and the worker do not agree on the interpretation of the facts, you may benefit from using Form SS-8. You can get it from IRS offices, download it from **www.irs.gov**, or order by calling **1-800-829-3676**.

Form 1099-MISC: Reporting Payments to Independent Contractors

If a worker is not your employee, you are not liable for filing Form W-2 or any employment tax returns with respect to that payee. However, in most cases, you are required to issue and file information returns, such as **Form 1099-MISC**, *Miscellaneous Income*, for amounts you pay in nonemployee compensation.

What types of payments require me to issue Form 1099-MISC?

You must issue **Form 1099-MISC** for each person to whom you have paid, in the course of government business, at least \$600 as compensation for services. The form is also required to report rents, services, prizes and awards, medical and health care payments, crop insurance proceeds, and attorney fees or gross proceeds to an attorney.

You should secure a taxpayer identification number from recipients prior to making any reportable payments. You can use **Form W-9**, *Request for Taxpayer Identification Number and Certification*, for this purpose.

Even if you are an exempt recipient as a government or tax-exempt organization, you are subject to the filing requirements.

Which payees should I issue Form 1099-MISC?

You are required to report payments to individuals, partnerships, estates, trusts, legal and medical service providers.

Are some payees exempt from the reporting requirements?

State and local governments are not required to issue Form 1099-MISC for payments to:

- Tax-exempt organizations and governments
- Vendors for merchandise, freight, storage, and similar items (BUT payments to vendors for services are reportable)
- Corporations (other than attorney fees, medical and health care payments)
- Rent to real estate agents
- Recipients of scholarships
- Recipients of difficulty-of-care payments

When is Form 1099-MISC due?

Make the recipient copy available by January 31 after the year the payment is for. You must send copies to the IRS by February 28. However, if you file electronically, the due date is March 31. Penalties apply for late filing. See the **Instructions for Forms 1099, 1098, 5498, and W-2G** for full information on filing requirements and deadlines.

EVEN IF YOU ARE
AN EXEMPT
RECIPIENT AS A
GOVERNMENT OR
TAX-EXEMPT
ORGANIZATION,
YOU ARE SUBJECT
TO THE FILING
REQUIREMENTS.

What if Form 1099-MISC is not issued or is not correct?

You may be subject to penalties for failure to file information returns, or to furnish them to the recipients. Government entities are not exempt from these penalties. In addition, if you fail to obtain a correct taxpayer identification number from the recipient, you may also be subject to backup withholding requirements, which will require you to withhold 30% from future payments. If you fail to backup withhold when required, you may be liable for the tax. See the **Instructions for Forms 1099, 1098, 5498, and W-2G** for more information.

Under what circumstances do I issue Form 1099-MISC to an employee?

If someone meets the tests to be your employee, all compensation, benefits, reimbursements, etc., paid in the course of that work should be reported on Form W-2 and are subject to withholding. Only services as an independent contractor that are completely separate from employment could be reported on Form 1099-MISC to an individual to report compensation for services performed as an independent contractor. All compensation to a worker who is your employee under the common-law rules should be reported on Form W-2.

Are there special requirements for Federal agencies?

Generally, Federal agencies are subject to the same reporting requirements as state and local governments listed above. However, Federal agencies are required to issue Form 1099-MISC to corporations for payments for services over \$600. An additional reporting requirement applies to Federal agencies and quasi-Federal government agencies making payments of \$25,000 or more under a contract for services. These are reported on Form 8596, Information Return for Federal Contracts. This form includes more detailed instructions for its use.

For complete information, see the **Instructions for Form 1099-MISC**, available at www.irs.gov.

REVISED 2002 1098-T, TUITION PAYMENTS STATEMENT

BY WANDA VALENTINE, FSLG PROGRAM ANALYST

Public colleges and universities should be aware of the required reporting of tuition payments on Form 1098-T. Eligible educational institutions must file Form 1098-T for each student for whom the institution received payments for qualified tuition and related expenses or made reimbursements or refunds of such amounts.

An eligible educational institution is generally defined as any accredited public, nonprofit, or proprietary postsecondary institution that is eligible to participate in a student aid program administered by the Department of Education. This includes an educational institution that is a governmental unit, an agency or instrumentality of a governmental unit. A designated officer or employee of the governmental entity must satisfy the reporting requirements of Form 1098-T.

The revised 2002 Form 1098-T includes new optional reporting procedures. An eligible educational institution may now choose to report payments received or amounts billed, and total amounts of scholarships and grants for qualified tuition and related expenses in designated boxes on the revised form. The revised form also allows an insurer to report reimbursements or refunds of qualified tuition and related expenses paid under an insurance arrangement. However, there is currently no requirement for the insurer to file this form.

The educational institution must use the same reporting method for all calendar years unless the IRS grants permission to change the reporting method. If the educational institution chooses not to follow the new optional reporting procedures, then the general reporting requirements apply.

There are several exceptions to this reporting requirement. An eligible educational institution does not have to file or furnish 1098-T if:

- The student is a nonresident alien, unless the student requests the form
- The student is enrolled in courses for which no academic credit is offered
- The student's qualified tuition and related expenses are entirely waived or paid entirely with scholarships; or
- The student's qualified tuition and related expenses are covered by a formal billing arrangement between the institution and the student's employer

For more information on these new optional reporting procedures and general reporting instructions and requirements, please refer to the 2002 *Instructions for Forms 1098-E and 1098-T*, which can be obtained from the IRS website at www.irs.gov or by calling 1-800-829-3676.

AN ELIGIBLE
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INSTITUTION MAY
NOW CHOOSE TO
REPORT PAYMENTS
RECEIVED OR
AMOUNTS BILLED
AND TOTAL
AMOUNTS OF
SCHOLARSHIPS AND
GRANTS.

CALENDAR OF EVENTS

We will use this calendar to keep you informed of major regional or national events in which FSLG will be participating in the coming months. We will also list local events as space allows. For more detailed information, visit www.irs.gov/govts or contact your local FSLG Specialist.

05/18/03 - 05/21/03

Government Finance

Officers Association

Manhattan, NY

D. Bowick

585-262-1901

08/10/03 - 8/14/03

National Association of State

Social Security Administrators

Portland, OR

G. Rigoni

925-279-4011 x204

FEDERAL, STATE AND LOCAL GOVERNMENTS CONTACTS

<u>STATE</u>	<u>SPECIALIST</u>	<u>TELEPHONE NUMBER</u>	<u>EXT.</u>
Alabama	Judy Nichols John Givens	(251) 340-1781 (251) 340-1761	
Alaska	Gary Petersen	(907) 456-0317	
Arkansas	Jan Germany	(501) 324-5328	253
Arizona	Kim Savage	(928) 214-3309	5
California	Gordon Parker Phyllis Garrett Fred Darbonnier	(909) 388-8161 (213) 576-3765 (916) 974-5614	
Colorado	Karen Porsch Chuck Sandoval	(719) 579-0839 (303) 446-1156	231
Connecticut	Phyllis Burnside	(401) 525-4205	
Delaware	Kevin Mackesey	(302) 856-3332	12
Florida	Sheree Cunningham Fernando Echevarria Paulette Leavins Mae Whitlow	(727) 570-5526 (954) 423-7406 (904) 220-6764 (407) 660-5822	440 293
Georgia	Denver Gates	(404) 338-8205	
Hawaii	Sue Ann Jansen	(503) 326-5057	
Idaho	Chris Casteel	(208) 334-1050	233
Illinois	Ted Knapp Joyce Reinsma Janie Smith	(618) 244-3453 (312) 566-3879 (630) 493-5148	
Indiana	Valerie Hardeman	(317) 226-5305	
Iowa	David Prebeck	(515) 573-4120	
Kansas	Gary Decker Allison Jones	(316) 352-7475 (316) 352-7443	
Kentucky	Ray McLennan	(270) 442-2607	127
Louisiana	Gloria Brooks Robert Lettow	(225) 389-0358 (318) 869-6312	119
Maine	Bob Westhoven	(207) 784-6988	
Maryland	James A. Boyd	(410) 962-9258	
Massachusetts	Mark A. Costa	(800) 651-4524	
Michigan	Daniel Clifford Lori Hill	(313) 628-3109 (906) 228-7831	
Minnesota	Pat Wesley	(218) 720-5305	225
Mississippi	John Givens Robert Lettow	(251) 340-1761 (318) 869-6312	
Missouri	Joe Burke Sharon Boone	(636) 940-6389 (417) 841-4535	

<u>STATE</u>	<u>SPECIALIST</u>	<u>TELEPHONE NUMBER</u>	<u>EXT.</u>
Montana	Katherine Dees	(406) 761-1825	229
Nebraska	Thomas Goman	(402) 361-0202	
Nevada	Gordon Parker	(909) 388-8161	
New Hampshire	Bob Westhoven	(207) 784-6988	
New Jersey	Pat Regetz Jennifer Macht	(908) 301-2119 (732) 819-3760	322
New Mexico	Toni Romero-Ackerman	(505) 837-5541	
New York	Martin Boswell Ernest Child Henry Ng Fran Reina	(315) 448-0811 (585) 262-1902 (212) 719-6600 (315) 793-8171	110
North Carolina	Joe Fish	(336) 378-2966	
North Dakota	Al Klamann	(701) 227-0133	
	Rhonda Kingsley	(701) 239- 5400	261
Ohio	Trudee Billo Amy Genter	(419) 522-2359 (419) 522-2259	
Oklahoma	Pat O'Neil	(405) 297-4895	
Oregon	Marilee Basaraba Sue Ann Jansen	(503) 326-5030 (503) 326-5057	
Pennsylvania	Patricia Crawley Doug Siegert Nora Bliven	(215) 861-1364 (412) 395-4871 (717) 291-1991	118
Rhode Island	Phyllis Burnside	(401) 525-4205	
South Carolina	Clifford Brown	(803) 253-3523	
South Dakota	Marlyce Luitjens	(605) 226-7216	231
Tennessee	Sharon Shelton	(615) 250-5191	
Texas	Olivero Martinez Steve O'Brien Robert Jackson Susan Serrano	(972) 308-1180 (512) 464-3120 (281) 721-7993 (512) 499-5435	
Utah	Katherine Dees	(406) 761-1825	229
Vermont	Fran Reina	(315) 793-8171	
Virginia	Eugenia Bahler Michael Durland	(703) 285-2350 (540) 887-2600	138
Washington	Clark Fletcher	(425) 821-3296	
West Virginia	Michael Durland	(540) 887-2600	
Wisconsin	Susan Borchardt Ruthann Watts	(414) 297-1672 (262) 798-8386	
Wyoming	Dwayne Jacobs	(307) 672-7425	33

www.irs.gov/govts

TAX EXEMPT BONDS

BY JOSEPH GRABOWSKI, SENIOR TEB ANALYST

Tax Exempt Bonds (TEB) offers specialized information and services to the municipal finance community. Municipal bonds provide tax-exempt financing for the furtherance of governmental and qualified purposes including the construction of airports, hospitals, recreational and cultural facilities, schools, water infrastructure, road improvements, as well as facilities and equipment used in providing police, fire and rescue services.

Tax Exempt Bonds activities are divided into two main categories: Field Operations, and Outreach, Planning and Review.

TEB Field Operations is responsible for identifying and correcting noncompliance with fairness and the highest level of integrity. Field Operations also assists in the delivery of outreach assistance to the municipal finance community as part of the TEB goal to help issuers understand the tax law to ensure up-front voluntary compliance.

TEB Outreach, Planning and Review (OPR) is primarily responsible for the development and coordination of both the Voluntary Closing Agreement Program and the Customer Education and Outreach Program. OPR has specially trained staff to develop educational materials on tax-exempt bond topics and to participate in conferences, seminars and workshops to share these materials and the latest tax law developments.

To learn more about the TEB programs available, visit the WEB site at **www.irs.gov/bonds** or contact Clifford Gannett, Manager of Tax Exempt Bonds Outreach Planning and Review at 202-283-9798.

TAX EXEMPT
BONDS OPR HAS
SPECIALLY
TRAINED STAFF TO
DEVELOP
EDUCATIONAL
MATERIALS ON
TAX-EXEMPT BOND
TOPICS